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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1964

No. 777

RAYMOND W. FLEMING
Petitioner,

-versus-

MICHAEL S. WOLKE,
Sheriff of Milwaukee County,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

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Raymond W. Fleming, the petitioner herein, respectfully prays that a writ of certiorari issue to review the final Judgment of the Supreme Court of Wisconsin, entered on the first day of September, 1964, which *reversed* the Judgment of the Circuit Court for Milwaukee County discharging the petitioner on a writ of *habeas corpus*.

OPINION BELOW

The opinion of the Supreme Court of Wisconsin is reported in 24 Wis. (2d) 606, and in 129 N.W. (2d) 841, and it appears in the record on this petition at page 68.

JURISDICTION

The Judgment of the Supreme Court of Wisconsin was rendered September 1, 1964.

A motion for rehearing was duly made thereafter, which was denied by the Supreme Court of Wisconsin on October 27, 1964.

The jurisdiction of this Court is invoked under 28 U.S. Code, Sec. 1257(3).

QUESTIONS PRESENTED FOR REVIEW

Does a state, which by statute permits an unlimited, as to scope or duration, secret pretrial discovery examination by a magistrate and prosecutor of a person about to be charged with an infamous crime and denies him his right to counsel in such examination, and compels him by subpoena to appear and testify under oath without being apprised in any way of his status or rights and which deceives him into believing he was a State witness when such examination results in a criminal complaint and warrant against such person, violate the personal rights of a United States citizen guaranteed by the Fifth, Sixth, and Fourteenth Amendments and is such "John Doe" statute prohibited under the Fourteenth Amendment?

Does such procedure followed by the State of Wisconsin against the petitioner under its "John Doe" statute as set forth above comply with the fundamental requirements of fairness and due process imposed by the Fourteenth Amendment?

Are the personal rights guaranteed by the Fifth Amendment divisible and severable with only a part of the personal guarantees contained therein applicable to the states so as to permit a state to charge a person with

infamous crimes without presentment or indictment by a Grand Jury by substituting therefor "John Doe" proceedings sanctioned and conducted as set forth in the Statement of the Case?

Where the petitioner is made to answer for infamous crimes based upon and resulting from proceedings as hereinbefore described in violation of his personal rights as guaranteed to him under the United States Constitution, do such proceedings provide sufficient due process of law so as to form the basis of depriving the petitioner of his liberty?

CONSTITUTIONAL PROVISIONS INVOLVED

AMENDMENTS TO THE UNITED STATES CONSTITUTION

Article V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Article VI

* * *

Article XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the

United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

WISCONSIN CONSTITUTION

Article I

Declaration of Rights

Prosecutions; second jeopardy; self-incrimination; bail; habeas corpus. Section 8. No person shall be held to answer for a criminal offense without due process of law, and no person for the same offense shall be put twice in jeopardy of punishment, nor shall be compelled in any criminal case to be a witness against himself. All persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great; and the privilege of the writ of habeas corpus shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require it.

WISCONSIN STATUTES INVOLVED

954.025 John Doe proceeding. If a person complains to a magistrate that he has reason to believe that a crime has been committed within his jurisdiction, the magistrate shall examine the complainant on oath and any witnesses produced by him and may, and at the request of the district attorney shall, subpoena and examine other witnesses to ascertain whether a crime has been committed and by whom committed. The extent to which the magistrate may proceed in such examination is within his discretion. The examination may be adjourned and may be secret. If it appears probable from the testimony given that a crime has been committed and who committed it, the complaint shall be reduced to writing and signed and verified; and thereupon a warrant shall issue for the arrest of the accused. The record of such pro-

ceeding and the testimony taken shall not be open to inspection by anyone except the district attorney unless it is used by the prosecution at the preliminary hearing or the trial of the accused and then only the extent that it is so used.

Sec. 255.10 Wis. Stats. et seq: Grand jury. (Appendix A)

STATEMENT OF THE CASE

The petitioner, who was a clerk of court, was served on August 21, 1962, with a subpoena (Appendix B, 1 & 2), to appear on the same morning and give evidence on the part of the State in a "John Doe" proceeding. The examination was conducted under sec. 954.025 Wis. Stats. The judge who issued the subpoena conducted the secret proceeding. The petitioner was sworn and interrogated under oath at length. The subpoena not only commanded his appearance but commanded him to "give evidence" as a State witness.

At no time before or during his interrogation or testimony was he advised that his status was that of the accused, or of his rights. He actually had been deceived by the subpoena to believe that he was a witness on behalf of the State. Under the circumstances, he had been given no reason to even consider whether he should consult with counsel.

As a result of the "John Doe" proceedings, the petitioner was held to answer for infamous crimes by a criminal warrant signed by the "John Doe" magistrate on January 8, 1964 (R. 34-47). The "John Doe" proceeding was started sometime in the early part of 1962, continuing until at least January, 1964 (R. 9). The criminal complaint against the petitioner wholly resulted from the "John Doe" proceeding and a warrant was issued thereon and the petitioner arrested (R. 8). He

duly petitioned for a writ of *habeas corpus* (R. 4). In those proceedings the state admitted by demurrer the allegations in the petition and traverse, principally, to wit:

That the Circuit Court Judge acting as a magistrate initiated in the early months of 1962, an investigation and inquisition allegedly under sec. 954.025 Wis. Stats. (R. 11).

That the criminal warrant against the petitioner was wholly based upon information obtained as a result of said "John Doe" proceeding (R. 11, 17).

That the magistrate did not receive a complaint on oath as required by the "John Doe" statute, a prerequisite to proceeding under such statute (R. 11).

That subpoenas were used to compel persons suspected or accused, such as the petitioner, to appear before the magistrate and testify under oath (R. 15).

That the "John Doe" consisting of the magistrate and representatives of the Attorney General investigated activities which in their opinion were proper subjects for investigation without a Complaint (R. 15).

That persons charged with crime by either the State or Federal Court whose prosecutions were pending were summoned to appear in the proceeding; and the federal prosecutor was permitted to be present and hear the interrogation of a witness against whom charges were pending in Federal Court (R. 16, 26, 27).

That prior to the calling of the petitioner, pursuant to the subpoena, he, in effect, was an accused in the minds of the magistrate and other participants in said investigation and inquisitorial proceeding.

That by reason of the manner in which the petitioner was interrogated without advising him that he was a 'suspect' and 'a prospective defendant' the petitioner was compelled to give evidence to be used by said inquisitorial proceeding against the petitioner (R. 20).

That notwithstanding the fact that his status before the magistrate was that of an accused, the petitioner's interrogation was an investigation into the petitioner's alleged guilt, the purpose of which interrogation was unknown to the petitioner; without advising him of his status, the petitioner was compelled to give evidence with respect to himself before said inquisitorial proceeding (R. 17, 20).

That said proceeding constituted a trial of the petitioner in chambers without formal complaint, without advising petitioner of the purposes of said investigation and in the absence of counsel for the petitioner, all in violation of petitioner's rights guaranteed to him by the Constitution of the United States of America (R. 18).

That only after the conclusion of the testimony of the petitioner given pursuant to subpoena was he advised of his status as, in effect, the accused (R. 18, 21).

The Circuit Judge before whom the *habeas corpus* proceedings were conducted discharged the petitioner ruling the "John Doe" proceedings were illegally conducted (R. 8).

The Wisconsin Supreme Court reversed and ruled that if any of the petitioner's Constitutional rights were violated, they could be remedied on the trial under the rules

of evidence on a motion to suppress the evidence. 24 Wis. (2d) 606, 617; 129 N.W. (2d) 841, 847 (R. 76, 77).

The rights and privileges of the petitioner under the Constitution of the United States and the Amendments thereto were specifically raised and pleaded by the petitioner in the application for a writ of *habeas corpus* and were duly raised and repleaded in the traverse. The provisions thus raised were the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution. The rights and privileges of the petitioner under the United States Constitution were specifically repeated, urged, and argued before the Supreme Court of Wisconsin at all stages of proceedings before that Court.

The state's theory as to the Constitutional rights of the petitioner in the proceeding was succinctly stated at page 27 of its brief before the Wisconsin Supreme Court.

> It is not his (magistrate) duty to try issues of guilt or innocence and thus *the procedural safeguards which the constitution* (sic) *requires at a trial do not apply to the John Doe.* (Emphasis supplied)

The Supreme Court of Wisconsin did not reach this conclusion with respect to the Constitutional rights and privileges claimed by the petitioner but did state with respect thereto as follows: 24 Wis. (2d) 606, 617; 129 N.W. (2d) 841, 847:

> "The other arguments of the defendant do not involve questions of jurisdictional defects or the facts do not constitute such a defect. The form of the subpoena used in the John Doe proceeding did not deprive the magistrate of jurisdiction to issue the warrant. If the defendant believes the subpoena was improper he could have refused to testify; having testified, the defendant waived his objection. Nor

does the defendant's argument that he was compelled to testify while a suspect in violation of the Fifth and Fourteenth amendments of the United States constitution raise a jurisdictional question. The Fifth amendment is now applicable in effect to state proceedings by virtue of the Fourteenth amendment. Malloy vs. Hogan (1964), 378 U.S. 1, 84 Sup. Ct. 1489, 12 L.Ed. (2d) 653. *If the defendant should not have been interrogated while a suspect without warning or advice that he was a suspect, his testimony was illegally obtained and the question of its use can be raised by a proper motion to suppress* under sec. 955.09, Stats." (Emphasis supplied)

The Court touched again on some of the Constitutional questions raised in the following language: 24 Wis. (2d) 606, 618; 129 N.W. (2d) 841, 847:

"Defendant also argues his imprisonment is illegal because in violation of the Fifth and Fourteenth amendments of the United States constitution since he was entitled to immunity for testifying under sec. 325.24, Stats., except for perjury which is not charged. Under State v. Davidson (1943) 242 Wis. 406, 8 N.W. (2d) 275, the immunity of that statute applies only when the defendant claims his constitutional privilege against self-incrimination, which was not done by this defendant. The Davidson decision is not affected by any contrary federal standard interpreting the Fifth amendment. The decision of United States v. Monia (1943), 317 U.S. 424, 63 Sup. Ct. 409, 87 L.Ed. 376, construing a somewhat similar federal statute as providing an automatic immunity does not establish a federal standard applicable to the facts before us nor is it binding upon this court in its construction of what the Wisconsin legislature meant in creating sec. 325.24 Stats. Additionally, *since the defendant's right under the constitution may be waived, a violation of such right is not jurisdictional but judicial error,* State ex rel. Isen-

ring v. Polacheck (1898), 101 Wis. 427, 77 N.W. 708, *and such errors may be governed by the harmless-error rule,* Pulaski v. State, ante, p. 450, 129 N.W. (2d) 204." (Emphasis supplied)

REASONS FOR GRANTING WRIT

This Court has given indication by a chain of decisions that the personal rights safeguarded by the first eight amendments against national action should also be safeguarded against state action for the reason that denial of these personal rights would be a denial of due process of law.

It is respectfully submitted that the personal right guaranteed by the first clause of the Fifth Amendment should be included in those safeguarded; to wit:

> "No person shall be held to answer for a(n) * * * infamous crime, unless on a presentment or indictment of a Grand Jury, * * *"

It is recognized that this Court in *Hurtado vs. State of California* (1884), 110 U.S. 516, 538, 4 S. Ct. 111, 292, 28 L.Ed. 232, ruled that the words, "due process of law" in the Fourteenth Amendment of the Constitution, do not necessarily require indictment by a Grand Jury in a prosecution by the State of a crime. The Court in reaching this decision gave many cogent reasons and contentions why a contrary rule would be desirable, but ruled as it did specifically contemplating a proceeding, by a magistrate, certifying to the probable guilt of the defendant, with the right on accused's part to the aid of counsel, and to the cross examination of the witnesses produced for the prosecution which would be equivalent to the due process of law represented by the Grand Jury.

It is respectfully submitted, in the light of trial by time and of the abuses arising out of the substitutions for

the Grand Jury such as the "John Doe" in the case at bar, the dissenting Justice's opinion should be reconsidered for acceptance. After tracing the centuries of evolvement of the Grand Jury system and the authorities with respect thereto and the safeguards provided thereby, he concluded, in effect, that the Grand Jury requirement contained in the Fifth Amendment was an integral element of due process of law protecting the fundamental principles of liberty and justice which were recognized when the Fourteenth amendment was adopted to secure the citizen liberty and justice and involved in due process of law as required by that amendment in proceedings conducted under the sanction of a state and it was the supreme law of the land.

The Court indicated in *Malloy vs. Hogan* (1964) 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed. (2d) 653, that Federal standards are applicable in determining whether the accused's rights guaranteed to him under the Fifth Amendment have been violated. The Court held the Fourteenth Amendment guaranteed to the petitioner the protection of the Fifth Amendment privilege against self-incrimination under applicable Federal standards. This shift by the Court was pointedly made to reflect that the American system of criminal prosecution *is accusatorial not inquisitorial,* and that the Fifth Amendment privilege is its essential mainstay.

It is respectfully submitted that the dichotomy of the State and Federal standards as to what constitutes due process for the prosecution of any person for an infamous crime should be removed and that a Federal standard under the Constitution should apply as a minimal uniform standard throughout the land. The elementary requirement of equal protection begs such uniformity.

No person such as the petitioner should be held to answer for any alleged infamous crime as a result of an Inquisition or Star Chamber form of proceeding. Appellate courts are cluttered with appeals resulting from abuses spawned by varied systems which substitute for the Grand Jury system. This case contrasts the Federal Grand Jury procedure in terms of the requirements of due process to the alternatives which have developed such as the magistrate herein whose examination by statute was bound solely by his own discretion. The prophetic dissent in *Hurtado v. California* (1884) 110 U.S. 516, 538, 28 L.Ed. 232, 4 S.Ct. 111, 292, forecast the inroads by the state utilized as ersatz Grand Jury procedure.

Wisconsin has provision for a Grand Jury (Appendix A) but the "John Doe" proceeding is utilized to provide a so-called 'short cut' to evade the Grand Jury procedure. It is respectfully contended, that there are no short cuts to due process of law. What is prohibited to a Grand Jury in its proceedings to arrive at a criminal indictment should not be allowed to be endowed by states to a two-man inquisition with no limit as to the discretion to be exercised. See 22 F.R.D. 343 for a discussion of Grand Jury procedures and requirements.

The mischief accomplished when the safeguards of due process should be required, but are not adhered to, is raised in this petition before the Court. Under the State's statutory proceedings, a magistrate and a prosecuting attorney were authorized between themselves to commence and conduct a secret inquisition. The extent of examination was bounded only by the magistrate's discretion. He was given by the statute the power of subpoena and the authority thereby to compel attendance

and testimony. This is further demonstrated by the legislative history of the statute.

1960 Wisconsin Annotations 954.025

"History: 1949 c. 631; Stats. 1949 s. 354.025; 1953 c. 601; 1955 c. 660 s. 13; Stats. 1955 s. 954.025.

"Comment of Advisory Committee, 1949: The John Doe procedure which has been established by the courts has been written into 354.025 to make the remedy more readily available and better understood. (Bill 474-S)

"On complaint that a criminal offense has been committed the magistrate may cause witnesses other than the complainant to be subpoenaed and may examine them on oath to ascertain whether such offense has been committed, and, if so, by whom. A witness who has been subpoenaed and refuses to be sworn or to testify may be punished as for contempt. In conducting the examination the magistrate exercises judicial powers, and the scope of his investigation is not limited as to time. State ex rel. Long v. Keyes, 75 W 288, 44 NW 13."

The accused in this pretrial discovery proceeding is not named. When he appears as a witness he is not required to be advised of his status or informed of his rights as the accused. There is no provision for the right to counsel. The subpoena was drafted in such a manner as to lead the accused to believe he is to give testimony on the part of the State. The contemplated work product of the statutory proceedings are: a criminal complaint, criminal warrant, and evidence to support conviction.

It is from an examination of such proceedings that the ultimate judicial wisdom of the history of the Common Law as cast in the first eight amendments and particularly the Fifth Amendment becomes clear and all the more

precious. The Fourteenth Amendment should make these safeguards available to all United States citizens.

In the original state that had both the Grand Jury and "John Doe" procedure, certain safeguards are held inviolate as to both these procedures.

People v. Waterman (1961) 9 N.Y. (2d) 561, 216 N.Y.S. (2d) 70, 175 N.E. (2d) 445

People v. Laino (1961) 10 N.Y. (2d) 161, 218 N.Y.S. (2d) 647, 176 N.E. (2d) 571

People v. Gillette (1908) 111 N.Y.S. 133, 26 App. Div. Reports 665

People v. Steuding (1959) 189 N.Y.S. (2d) 166, 160 N.E. (2d) 468

In the recent case of *Escobedo v. Illinois* (1964), 378 U.S. 478, 84 S.Ct. 1758, 12 L.Ed. (2d) 977, this Court was asked to suppress a confession obtained after the accused had requested the right to consult with counsel. The Court held, as material to this petitioner, that where an investigation focuses upon a specific suspect in a process of interrogation that lends itself to illiciting incriminating statements and the suspect has been denied his right to consult with a lawyer and the police have not effectively warned him of his Constitutional rights to remain silent, the accused has been denied his right to counsel in violation of the Sixth Amendment to the Constitution which is made obligatory upon the States by the Fourteenth Amendment.

The Court referred to a test for due process which, it is respectfully urged by this petition, should apply to the petitioner under the instant circumstances:

> Has the petitioner been deprived of counsel for any part of the pre-trial proceedings to his prejudice so

as to infect his subsequent trial with an absence of that fundamental fairness essential to the very concept of justice?

It is respectfully stated that no question is being raised with respect to the rights of police or other duly constituted law enforcement agencies to conduct and carry on investigations into unsolved crime in the manner provided by law. The condemnation we ask the Court to consider is: where the judicial authority of the State is combined with that arm of the State which is charged with prosecuting crime in a statutory secret pre-trial discovery proceeding and given unlimited discretion as to the extent of examination, does the right inhere as a result of such inquisition to charge persons, including the accused, who was subpoenaed and examined in such proceedings contrary to his Constitutional rights, to answer for infamous crimes?

We request the Court to consider whether the requirements of due process of law and the first clause of the Fifth Amendment, as applied to the petitioner who has been called upon to answer for infamous crimes, guaranteed to him the right to the safeguards required under the Grand Jury system as presently required in Federal prosecutions. This concept of due process of law, it is respectfully submitted, should be a standard made applicable by the Fourteenth Amendment as the law of the land.

In keeping with the recognized concepts of fairness culminating recently in, among other cases, *Massiah v. United States* (1964), 377 U.S. 201, 84 S.Ct. 1199, 12 L.Ed. (2d) 246; *Malloy v. Hogan* (1964), 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed. (2d) 653, and *Escobedo v. Illinois* (1964), 378 U.S. 478, 84 S.Ct. 1758, 12 L.Ed. (2d)

977, the rights of the accused should adhere at the time he and the State became adversaries in fact. It is respectfully urged that these rights should not be considered waived until he is intelligently apprised of his status and advised of his rights. To compromise these personal rights should not be merely harmless error or exclude those portions of evidence only directly affected thereby. The practices sanctioned by the "John Doe" statute and administered by the magistrate are condemned by the precepts of the Fifth and Fourteenth Amendments.

It is further respectfully submitted, under the circumstances in this case, that where the pretrial proceedings with respect to the accused were tainted as set forth herein, and his rights compromised and it being admitted by the State's demurrer that the criminal complaint and warrant against the petitioner were based upon the statutory "John Doe" proceeding, the only adequate remedy and deterrent is to declare the proceeding unlawful and its work product null and void.

In *Culombe v. Connecticut* (1961), 3o7 U.S. 568, 81 S.Ct. 1860, 6 L.Ed. (2d) 1037, this Court recognized the principle that the violation of a personal right was no longer merely evidentiary in character so as to operate to exclude it, but that it was a "substantive right" as are those of property, freedom of speech, freedom of assembly, and the right to counsel in serious cases.

In *Ker v. California* (1963), 374 U.S. 23, 83 S.Ct. 1623, 10 L.Ed. (2d) 726, this Court ruled that due process requirements precluded the states from examining such cases purely from an admissibility aspect and that its prescribed fundamental criteria under the Constitution were henceforth to be enforced on the individual states.

It is urged that compliance with Constitutional mandates as to personal rights should be made essential juris-

dictional prerequisites. *Johnson v. Zerbst* (1938), 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461.

The limit of the full control which the state has in the proceedings of its courts in criminal cases should be subject at least to the qualification that such procedure is not to work a denial of fundamental rights or conflict with specific and applicable provisions of the Federal Constitution. *West v. Louisiana* (1904), 194 U.S. 258, 263, 24 S.Ct. 650, 48 L.Ed. 965. And these, it is respectfully urged, should include all personal rights guaranteed by the first eight amendments and particularly the Fifth Amendment rights.

It is respectfully submitted that the Wisconsin Supreme Court has erred in its interpretation of the meaning and application to the State of this Court's decisions with respect to the application and requirements of the Fifth and Fourteenth Amendments, particularly insofar as these Amendments are discussed in its decision as set forth at the end of the Statement of the Case.

It is urged that the Court consider and contrast what has been determined to meet the minimal requirement of due process as to the rights of the accused in the military, in the procedure substituted for the Grand Jury procedure, as set forth clearly and succinctly in the Manual for Courts-Martial, United States, 1951, article 34, p. 45:

> "b. Advising the accused. — At the outset of the investigation the accused will be informed of the following: The offense charged against him; the name of the accuser and of the witnesses against him as far as then known by the investigating officer; the fact that charges are about to be investigated; his right to have counsel represent him at the investiga-

> tion if he so desires, as provided in Article 32; his right to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense, extenuation, or mitigation; his right to have the investigating officer examine available witnesses requested by him; his right to make a statement in any form, but that he is not required to make any statement regarding the offense of which he is accused or being investigated, and that any statement he may make may be used as evidence against him in a trial by court-martial."

It is respectfully submitted that if this Court is to approve one-man secret Grand Jury type proceedings, whether they be termed "John Doe" or by any other name, that such proceedings must have imposed upon them standards of fairness to conform them to the due process requirements of the Fourteenth Amendment. A person who is a "putative defendant" subpoenaed before such a statutory body must be assured that his Constitutional rights are protected.

CONCLUSIONS

Upon all the facts before this Court and the law applicable, petitioner prays that the Court grant this petition for the reasons hereinbefore stated in that the petitioner has been made to answer for infamous crimes, not by a presentment of or indictment of a Grand Jury as required by the Fifth Amendment, but as the result of state statutory proceedings in which the petitioner was subpoenaed to attend the secret proceeding and deceived into giving testimony as to his alleged guilt without the benefit of counsel or being advised of his status or rights and thus deprived of the personal Constitutional rights guaranteed

to him by the Fifth and Sixth Amendments and which State statutory proceeding abridged the privileges and immunities of the petitioner and he is thus deprived of his liberty without due process of law as established and measured by Federal standards, all of which, it is respectfully stated, is contrary to the Fourteenth Amendment.

Respectfully submitted,

RAY T. MCCANN
Counsel for Petitioner

APPENDIX A

WISCONSIN STATUTES

255.10 Grand jury. (1) SELECTION OF GRAND JURY LIST. Any judge may in writing order the jury commissioners to select a grand jury list within a specified reasonable time. The commissioners shall select, as provided in s. 255.04, the names of not less than 75 nor more than 150 persons to constitute such list. They shall notify the judge in writing within the time fixed in the order that they have complied therewith. They shall keep the list secret.

* * * * *

(6) TIME GRAND JURORS TO SERVE. Grand jurors shall serve during the current term of court. The judge may order them to continue during the following term, but for no longer period. The judge may discharge the grand jury at any time.

255.11 Oath of grand jurors. The judge shall administer the following oath to grand jurors before they begin performance of their duties: You, as grand jurors for the county of . . . . , do solemnly swear (or affirm, as the case may be) that you will diligently inquire as to all matters and things which come before this grand jury; that you wil keep all matters which come before this grand jury secret; that you will indict no man for envy, hatred or malice, neither will you leave any man unindicted for love, fear, favor, affection or hope of reward; and that you will indict truly, according to the best of your understanding; so help you God. The clerk of court shall deliver forthwith to each grand juror a copy of such oath.

255.14 Oaths to witnesses. The foreman of every grand jury, district attorney or other prosecuting officer who shall be before them shall have authority to administer

all oaths and affirmations in the manner prescribed by law to witnesses who shall appear before such jury for the purpose of testifying in any matter of which they have cognizance; and the foreman shall return to the court a list, under his hand, of all witnesses who shall have been sworn before the grand jury during the term, and the same shall be filed by the clerk.

255.15 District attorney, when to attend. Whenever required by the grand jury it shall be the duty of the district attorney of the county to attend them for the purpose of examining witnesses in their presence or of giving them advice upon any legal matter, and to issue subpoenas and other process to bring up witnesses.

255.17 Report progress and return indictments. Said grand jury so selected may report progress and return indictments to the court from time to time during its session and until discharged.

255.18 Procedure upon discharge of grand jury. When the grand jury is discharged the clerk shall collect all transcripts of testimony, minutes of proceedings, exhibits and other records of the grand jury, and deliver them as the jury directs either to the attorney general or to the district attorney, or upon approval of the court deliver them to the clerk of the court who shall impound them subject to the further order or orders of the court.

255.19 Indictment not to be disclosed. No grand juror or officer of the court, if the court shall so order, shall disclose the fact that any indictment for a felony has been found against any person not in custody or under recognizance, otherwise than by issuing or executing process on such indictment, until such person has been arrested.

255.20 Votes not to be disclosed. No grand juror shall be allowed to state or testify in any court in what manner he or any other member of the jury voted on any question before them, or what opinion was expressed by any juror in relation to such question.

255.21 When testimony may be disclosed. Members of the grand jury and any grand jury reporter may be required by any court to testify whether the testimony of a witness examined before such jury is consistent with or different from the evidence given by such witness before such court; and they may also be required to disclose the testimony given before the grand jury by any person upon a complaint against such person for perjury, or upon his trial for such offense. Any transcript of testimony taken before the grand jury and certified by a grand jury reporter to have been carefully compared by him with his minutes of testimony so taken and to be a true and correct transcript of all or a specified portion of the same, may be received in evidence with the same effect as the oral testimony of such reporter to the facts so certified, but such reporter may be crossexamined by any party as to such matter.

255.22 May serve twice at same term. When the grand jury attending any court shall have been dismissed before the court is adjourned without day they may be summoned to attend again in the same term, at such time as the court shall direct, for the dispatch of any business that may come before them.

APPENDIX B

(Cover)

STATE OF WISCONSIN
CIRCUIT COURT, CRIMINAL DIVISION
MILWAUKEE COUNTY

STATE OF WISCONSIN

Plaintiff

- vs -

JOHN DOE, etal

Defendants.

SUBPOENA

Served
8/21/62

G. J. Witkowski, Sheriff

Per E. A. Michalski

STATE OF WISCONSIN: MILWAUKEE COUNTY
CIRCUIT COURT: CRIMINAL DIVISION

STATE OF WISCONSIN, Plaintiff

-vs- SUBPOENA

JOHN DOE, RICHARD ROE,
and OTHER PERSONS UNKNOWN, Defendants

State of Wisconsin } ss.
Milwaukee County }

To: Raymond W. Fleming
Chief Deputy Clerk
Criminal Courts
Safety Building
Milwaukee, Wisconsin

You are hereby commanded that laying aside all and singular your business and excuses, you be and appear before the Hon. John L. Coffey, Circuit Court Judge, at the Courthouse, Room 401,
Milwaukee, Wisconsin, on the 21st day of August, 1962, at 10:00 o'clock on the fore noon of said day, then and there to give evidence in a certain cause in which the state of Wisconsin is plaintiff and John Doe, Richard Roe, and other persons unknown are defendants then and there to be heard, on the part of the plaintiff.

HEREOF, fail not on pain of penalty which will fall thereon.

Given under my hand this 20th day of August, 1962.

/s/ John L. Coffey
Circuit Court Judge, Br. 12